

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

DAVID STEBBINS,

Plaintiff,

v.

RELIABLE HEAT & AIR, LLC, et al.,

Defendants.

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Case No. 10-3305-CV-S-RED

ORDER

Pending before the Court is Plaintiff's Motion for Jury Trial (Doc. 47), wherein Plaintiff makes his first demand for a jury trial. Plaintiff states that "[a]pparently, the Western District of Missouri wants me to demand a jury trial." However, it is not the Western District of Missouri's rules that govern the right and waiver of a jury trial. Federal Rule of Civil Procedure 38(b) provides,

On any issue triable of right by a jury, a party may demand a jury trial by: (1) serving the other parties with a written demand--which may be included in a pleading--no later than 14 days after the last pleading directed to the issue is served; and (2) filing the demand in accordance with Rule 5(d).

The "last pleading directed to the issue" was Defendants' Answer, which was served on November 18, 2010. *See Indiana Lumbermens Mut. Ins. Co. v. Timberland Pallet and Lumber Co., Inc.*, 195 F.3d 368, 374 (8th Cir. 1999). Because Plaintiff did not first request a jury trial until January 25, 2011, Plaintiff did not timely demand a jury trial. Nonetheless, the Court will **GRANT** Plaintiff's Motion (Doc. 47) because Plaintiff is representing himself and because the time for Defendants to file opposition to Plaintiff's Motion has passed without opposition from Defendants. The Court's Scheduling and Bench Trial Order (Doc. 45) and Rules of Bench Trial (Doc. 46) are hereby **VACATED**.

IT IS SO ORDERED.

DATED: February 14, 2011

/s/ Richard E. Dorr

RICHARD E. DORR, JUDGE
UNITED STATES DISTRICT COURT